

U.S. Department of Justice

United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

July 21, 2021

BY ECF

Jonathan Marvinny, Esq. Jennifer Willis, Esq. Federal Defenders of New York 52 Duane Street NY, NY 10007

Re: United States v. Ethan Melzer, S1 20 Cr. 314 (GHW)

Dear Counsel:

Please be advised that today the Government made a classified, *ex parte* submission to Judge Woods pursuant to Section 4 of the Classified Information Procedures Act and Federal Rule of Criminal Procedure 16(d), concerning classified discovery in this case. A proposed Protective Order submitted to the Court is enclosed with this letter.

By: /s/
Sam Adelsberg
Matthew Hellman
Assistant United States Attorneys
One St. Andrew's Plaza
New York, New York 10007
212-637-2494 / 2278

Enclosure.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-V.-

S1 20 Cr. 314 (GHW)

ETHAN MELZER,

PROTECTIVE ORDER

WITH RESPECT TO CERTAIN

Defendant.

DISCOVERY

WOODS, D.J.:

This matter came before the Court on the Government's motion ("Government Motion"), exhibits, and the declarations of various Government officials (collectively, the "Government Submission"). The Government Submission was filed *ex parte*, *in camera*, and through the Classified Information Security Officer on July 21, 2021.

The Government Submission sought a protective order, pursuant to Section 4 of the Classified Information Procedures Act ("CIPA") and Rule 16(d)(1) of the Federal Rules of Criminal Procedure, regarding disclosure of certain information. After ex parte, in camera consideration of the Government Submission, this Court finds:

- 1. That the Government Submission contains and describes classified information that requires protection against unauthorized disclosure. That information is described with particularity in the Government Submission.
- 2. The head of the department that has control of the classified information described in the Government Submission, after actual personal consideration, has lodged the state secrets privilege with respect to that classified information.

3. Disclosure of the "Classified Materials"—as that term is defined in the Government Submission—to the defense or the public could reasonably be expected to cause serious damage to the national security.

4. The Classified Materials are not discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, or Rule 16 of the Federal Rules of Criminal Procedure. In addition, the Classified Materials are not helpful to the defense, that is, useful to counter the Government's case or bolster a defense, as required under *United States v. Aref*, 533 F.3d 72, 78 (2d Cir. 2008).

Accordingly, it is:

ORDERED that the Government Motion is granted, and the Classified Materials, as defined in the Government Motion and described herein, need not be disclosed to the defense; and it is further

ORDERED that the Government Submission is hereby sealed, and shall remain preserved in the custody of the Classified Information Security Officer, in accordance with established court security procedures, until further order of this Court.

SO ORDERED in Chambers this _____ day of ______, 2021.

THE HONORABLE GREGORY H. WOODS United States District Judge Southern District of New York

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